

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 22 of the Captive Insurance Company Act of 2004, effective March 17, 2005 (D.C. Law 15-262; D.C. Official Code § 31-3931.21), hereby gives notice of the adoption on an emergency basis of the following amendments to Title 26 (Insurance) of the District of Columbia Municipal Regulations. This emergency action is necessary to ensure that regulations governing the licensing and regulation of reciprocal insurers are in place to protect the policyholders of such companies operating in and from the District. The purpose of the rules is to provide a regulatory scheme that will allow captive insurance companies to organize or reorganize in the District as reciprocal insurance companies.

The Commissioner also gives notice of his intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*

These emergency regulations were adopted on October 29, 2007 and shall be effective on November 26, 2007. The emergency regulations shall expire 120 days after their effective date, or upon publication in the *D.C. Register* of a Notice of Final Rulemaking, whichever occurs first.

A new chapter 40 of Title 26 of the DCMR is added to read as follows:

CHAPTER 40 RECIPROCAL INSURANCE COMPANIES

4001 AUTHORIZATION AND APPLICABILITY

4001.1 Any captive insurer may organize or reorganize and operate as a reciprocal insurer, subject to the act and these regulations. These regulations shall apply to all captive insurers organized as reciprocal insurers. It specifies the terms on which a reciprocal insurer may receive a certificate of authority and operate in the District of Columbia. These regulations provide for the licensing and regulation of reciprocal insurers, the conversion of a domestic stock or mutual insurance company into a domestic reciprocal insurer, the merger of a domestic reciprocal insurer with another reciprocal insurer, and the conversion of a domestic reciprocal insurer into a stock or mutual insurance company.

4002 EXISTING RECIPROCAL

4002.1 Existing authorized reciprocal insurers shall, after January 1, 2009, comply with these regulations and shall make such amendments to their subscribers' agreement, power of attorney, policies, and other documents and accounts and perform such other acts as may be required for such compliance.

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4003**INSURING POWERS OF RECIPROCAL****4003.1**

A reciprocal insurer may, upon qualifying under the act, transact any kind or kinds of insurance defined by the act.

4003.2

A reciprocal insurer may purchase reinsurance upon the risk of any subscribers and may grant reinsurance as to any kind of insurance it is authorized to transact directly.

4004**NAME, SUITS, AND POWERS****4004.1**

No reciprocal insurer shall be authorized to transact business in the District unless the name under which reciprocal contracts are to be exchanged shall include the word "reciprocal" or be supplemented by the following words immediately below the name under which such contracts are exchanged: "A reciprocal".

4004.2

A reciprocal insurer may sue and be sued in its own name.

4004.3

A reciprocal insurer may own property in its own name.

4004.4

A reciprocal insurer shall have the power to borrow and lend money from or to any person.

4004.5

A reciprocal insurer shall have the power to the fullest extent permitted by law to indemnify its officers, employees, or agents and members of the subscriber's advisory committee.

4004.6

A reciprocal insurer shall have and exercise all powers necessary or convenient to effect any and all of the purposes for which it is formed and which are authorized by the act.

4005**ATTORNEY, SUBSCRIBERS, AND RECIPROCAL INSURER A SINGLE ENTITY****4005.1**

"Attorney", as used in this chapter, means the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

4005.2

The attorney of a foreign reciprocal insurer, which insurer is duly authorized to transact insurance in the District, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in the District, be thereby deemed to be doing business in the

District within the meaning of any laws of the District applying to foreign persons, firms, or corporations.

4005.3

The subscribers and the attorney-in-fact comprise a reciprocal insurer and are a single entity for:

- (a) All fees, charges, and taxes imposed by the act; and
- (b) Any operation conducted under the reciprocal insurer's certificate of authority.

4006

ORGANIZATION OF RECIPROCAL INSURER

4006.1

Three or more persons may organize a domestic reciprocal insurer and make application to the Commissioner for a certificate of authority to transact insurance.

4006.2

The proposed attorney shall fulfill the requirements of and shall execute and file with the Commissioner when applying for a certificate of authority, a declaration verified by the oath of such attorney, or when such attorney is a corporation by the oath of an officer thereof, setting forth:

- (a) The name of the insurer;
- (b) The location of the insurer's registered office, which shall be the same as the registered office of the attorney and shall be maintained within the District;
- (c) The kinds of insurance proposed to be transacted;
- (d) The names and addresses of the original subscribers;
- (e) The designation and appointment of the proposed attorney and a copy of the power of attorney;
- (f) The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if a firm;
- (g) The powers of the subscribers' advisory committee and the names and terms of office of the members thereof;
- (h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

- (i) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than three months at the rate provided therein; and
- (j) A pro-forma statement of the financial condition of the insurer, a schedule of its assets and a statement that the surplus as required by the act is available.

4006.3 Any domestic stock or mutual insurance company may convert to a domestic reciprocal insurer in accordance with a plan filed with and approved by the Commissioner. Upon approval of a plan the Commissioner shall issue a new or amended certificate of authority which shall be the final act of conversion. The new domestic reciprocal insurer shall be the continuation of the converted stock or mutual company and be deemed organized on the date the converted stock or mutual company was organized.

4006.4 No declaration shall be required under this section for any reciprocal insurer organized in the District as a result of a conversion under subsection (3) of this section.

4007 CERTIFICATE OF AUTHORITY

4007.1 The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

4007.2 The Commissioner may refuse to issue, suspend, or revoke the certificate of authority, in addition to any other applicable grounds, for failure of the attorney to comply with any applicable provision of the act or this chapter.

4008 POWER OF ATTORNEY

4008.1 The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

4008.2 The power of attorney must set forth:

- (a) The powers of the attorney;
- (b) The general services to be performed by the attorney;

- (c) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses to be paid by the insurer; and
- (d) A provision for a contingent several liability of each subscriber who is issued an assessable policy in a specified amount, which amount shall not be less than one or more than ten times the premium or premium deposit stated in the policy.

4008.3

The power of attorney may:

- (a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
- (b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
- (c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee;
- (d) Provide that only non-assessable policies shall be issued; and
- (e) Contain other lawful provisions deemed advisable.

4008.4

The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement or modification thereof shall be used by a domestic reciprocal or be effective in the District until approved by the Commissioner.

4009

MODIFICATIONS

4009.1

Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. Without additional notice, execution, or acceptance, every subscriber shall be bound by any modification of the subscriber agreement or power of attorney. However, no such modification shall be effective retroactively nor as to any insurance contract issued prior thereto unless agreed to by the affected subscriber.

4010

ATTORNEY'S BOND

4010.1

Concurrently with the filing of the declaration provided for in section 4006 of this chapter, the attorney of a domestic reciprocal insurer shall file with the Commissioner a bond in favor of the reciprocal for the benefit of all persons damaged as a result of breach by the attorney of the conditions

of the attorney's bond as set forth in subsection (2) of this section. The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the Commissioner's approval.

4010.2 The amount of the bond shall be \$250,000, in aggregate form, and be conditioned so that the attorney will faithfully account for all moneys and other property of the insurer coming into the attorney's hands, and that such attorney will not withdraw, or appropriate for his/her own use, the funds of the insurer or any moneys or property to which he/she is not entitled under the power of attorney.

4010.3 The bond shall provide that it is not subject to cancellation unless 30 days advance notice in writing of cancellation is given to both the attorney and the Commissioner.

4011 DEPOSIT IN LIEU OF BOND

In lieu of the bond required under section 4011 of this chapter, the attorney may maintain on deposit, through the office of the Commissioner, a like amount in cash or in value of securities qualified under section 8 of the act.

4012 ACTION ON BOND

Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by the subscriber's advisory committee or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of such bond

4013 SERVICE OF PROCESS

Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at the attorney's registered offices or by serving the Commissioner as the insurer's process agent under the "Insurers Service of Process Act of 1994," effective March 21, 1995 (D.C. Law 10-233; D.C. Official Code § 31-202).

4014 CONTRIBUTIONS TO INSURER

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its

minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the Commissioner. This section does not apply to commercial loans or to other loans made upon security.

4015**METHOD OF DETERMINING FINANCIAL CONDITION****4015.1**

In determining the financial condition of a reciprocal insurer, the Commissioner shall apply the following rules:

- (a) The Commissioner shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.
- (b) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.
- (c) The surplus deposits of subscribers shall not be charged as a liability.
- (d) The subscribers' and other accounts as provided in subsection 4016.2 of this section shall not be charged as a liability unless and until the subscriber or other person entitled to the account has a right to withdraw the account.
- (e) All premium deposits delinquent less than 90 days shall be allowed as assets.
- (f) An assessment levied upon subscribers and not collected shall not be allowed as an asset.
- (g) The contingent liability of subscribers shall not be allowed as an asset.
- (h) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.
- (i) The Commissioner shall permit any reciprocal that is a captive insurer or risk retention group to use such accounting rules, principles, procedures and practices as are permitted for mutual captive insurers or risk retention groups.

4015.2

A reciprocal insurer may establish one or more categories or types of subscriber and other surplus accounts with such terms and conditions as may be provided in the subscriber's agreement or power of attorney and

allocate to such accounts amounts as may be determined by the subscribers advisory committee.

4016 SUBSCRIBERS

4016.1 Subscribers are persons, including any association, aggregate of individuals, purchasing group, business company, corporation, individual, joint stock company, Lloyds type organization, cooperative, partnership, receiver, reciprocal, interinsurance exchange, trustee or society or government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees or fiduciaries that exchange reciprocal interinsurance contracts with each other. Any officer, representative, trustee, receiver or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity. The right to exchange such contracts is incidental to the purposes for which corporations are organized. No subscriber shall be found to be in the business of insurance as a result of exchanging reciprocal interinsurance contracts.

4017 SUBSCRIBERS' ADVISORY COMMITTEE

4017.1 The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt. The advisory committee may be known as and referred to as a board of directors, board of trustees, or such other designation as the committee chooses.

4017.2 Not less than two thirds of such committee shall be subscribers other than the attorney or any person employed by, representing or having a financial interest in the attorney, unless the reciprocal insurer and the attorney are under common "control" as that word is defined pursuant to section 2(2) of the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code §31-701(2)).

4017.3 The committee shall:

- (a) Supervise the finances of the insurer;
- (b) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
- (c) Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

- (d) Have such additional powers and functions as may be conferred by the subscribers' agreement.

4018**SUBSCRIBERS' LIABILITY GENERALLY****4018.1**

Subscribers shall be nonassessable unless specifically provided otherwise in the written power of attorney or in the written subscribers' agreement.

4018.2

The liability of each assessable subscriber under an assessable policy for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability, and not joint. Each subscriber under an assessable policy shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while the subscriber's policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section 4023 of this chapter.

4018.3

No policy issued by the insurer shall be assessable unless it contains a statement of the contingent liability set in type of the same prominence as the insuring clause.

4019**SUBSCRIBERS' LIABILITY ON JUDGMENT****4019.1**

No action shall lie against any subscriber upon any obligation claimed against the insurer.

4020**ASSESSMENTS****4020.1**

Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer having contingent liability under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the Commissioner or by the Commissioner during rehabilitation or liquidation of the insurer.

4020.2

Each subscriber's share of a deficiency for which an assessment is made shall not exceed the subscriber's aggregate contingent liability as computed in accordance with section 4023 of this chapter, and shall be computed by applying to the premium earned on the subscriber's policy or policies, during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned from all policies subject to the assessment.

4020.3

In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a

base from which charges not recurring upon the renewal or extension of the policy shall be deducted.

4020.4 Retrospective, audit, or other premium adjustments provided for in any policy of insurance shall not be considered assessments.

4020.5 No subscriber shall have an offset against any assessment for which such subscriber is liable on account of any claim for unearned premium or losses payable.

4021 TIME LIMIT FOR ASSESSMENTS

4021.1 Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for and shall pay the subscriber's share of any assessment, as computed and limited in accordance with this chapter if:

- (a) While the subscriber's policy is in force or within three years after its termination, the subscriber is notified by either the attorney or the Commissioner of his/her intention to levy such assessment, or
- (b) An Order to Show Cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while the subscriber's policy is in force or within three years after its termination.

4022 AGGREGATE OR CONTINGENT LIABILITY

4022.1 No one policy or subscriber as to such policy shall be assessed or charged with an aggregate or contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

4023 NONASSESSABLE POLICIES

4023.1 Any domestic reciprocal insurer may issue nonassessable policies.

4023.2 If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee, the Commissioner shall issue a certificate authorizing the insurer to extinguish the contingent liability of subscribers under all its policies previously issued.

4023.3 If required by the laws of another state in which the reciprocal insurer is transacting insurance as an authorized insurer, the reciprocal insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

4023.4 Retrospective, audit or other premium adjustments provided for in any policy of insurance shall not be considered assessments. Any policy of insurance issued by a reciprocal may provide for a minimum and maximum premium.

4024 SUBSCRIBERS' SHARE IN ASSETS

4024.1 Upon the liquidation of a domestic reciprocal insurer, its remaining assets shall be distributed according to such reasonable plan as the Commissioner may approve.

4024.2 No subscriber shall receive any distribution from a liquidated domestic reciprocal insurer until:

- (a) All indebtedness and policy obligations are discharged;
- (b) Any contributions of the attorney or other persons to the surplus of the reciprocal insurer have been returned; and
- (c) Any unused premium, savings, or credits held by the reciprocal insurer are returned.

4025 MERGER, CONVERSION, REORGANIZATION

4025.1 A domestic reciprocal insurer may merge with another reciprocal insurer or be converted to a stock or mutual insurer upon affirmative vote of not less than two thirds of its subscribers who are authorized to vote on such a merger or conversion, provided that timely notice of the proposed action is provided to the Commissioner and that the Commissioner approves in advance of all of the terms of the proposed merger or conversion.

4025.2 Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

4025.3 The Commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to each subscriber's

interest in the reciprocal insurer as determined in accordance with section 4025 of this chapter and a reasonable length of time within which to exercise such right.

4025.4

A domestic reciprocal may enter into any reorganization transaction with one or more other insurers where the reciprocal is the surviving or disappearing entity.

4026

IMPAIRED RECIPROCAL

4026.1

Whenever the assets of a domestic reciprocal insurer are insufficient to discharge its liabilities (other than any liability on account of funds contributed by the attorney or others) and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers that have been issued assessable policies. Such assessment shall not be in excess of any limitation set forth in the power of attorney or the insurance policy issued to the subscriber by the reciprocal.

4026.2

If the attorney fails to make up such deficiency or to make the assessment within 30 days after the Commissioner orders such attorney to do so or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*).

4026.3

If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers that have been issued assessable policies for such an amount, subject to limits as provided by this act, as the Commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation.

4099

DEFINITIONS

Where applicable, the words and phrases used in this chapter shall have the same meaning as is found in the Captive Insurance Company Act of 2004, effective March 17, 2005 (D.C. Law 15-262; D.C. Official Code § 31-3131.01 *et seq.*). Additionally, for purpose of this chapter, the term:

“Act” means the Captive Insurance Company Act of 2004, effective March 17, 2005 (D.C. Law 15-262; D.C. Official Code § 31-3131.01 *et seq.*).

“Assessable policy” means an insurance policy that permits an insurer to require its policyholders to contribute additional monies to the insurer in

the event that the insurer has insufficient funds to cover losses it is obligated to pay.

"Reciprocal insurers" or "reciprocals" mean an unincorporated insurance company, under a common name, in which subscribers exchange insurance policies through an Attorney in Fact, having the authority to obligate each subscriber both as insured and insurer, for the purpose of transferring and distributing insurance risks among its subscribers.

"Reciprocal interinsurance contract" means an insurance policy that is used to transfer and distribute insurance risks in a reciprocal insurance company.

"Risk retention group" has the same meaning as that term is defined in section 2(12) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Official Code § 31-4101(12)).

"Subscriber" means one or more persons who obtain insurance through the exchange of agreements of indemnity in a reciprocal insurer and who are obligated under a reciprocal insurance agreement.

All persons interested in commenting on the subject matter in the proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Dana Sheppard, Associate Commissioner, Risk Finance Bureau, Department of Insurance, Securities and Banking, 1400 L Street, NW, Suite 400, Washington, DC 20005. Comments may also be sent electronically to dana.sheppard@dc.gov. Copies of the proposed rulemaking are available, at cost, by writing to the above address. Copies of the proposed rulemaking also may be obtained from the Department at the same address during the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.